



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

MAR - 9 2006

URGENT LEGAL MATTER -- PROMPT REPLY NECESSARY

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Re: Notice of Potential Liability and Request to Perform RI/FS Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., for the Berry's Creek Study Area, Bergen County, New Jersey

Dear :

The United States Environmental Protection Agency ("EPA") is charged with responding to the release or threat of release of hazardous substances, pollutants, and contaminants into the environment and with enforcement responsibilities under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. Sections 9601-9675.

As you know, EPA has documented the release and threat of release of hazardous substances into the environment at the Berry's Creek Study Area, Bergen County, New Jersey (the "Site"). In response to the release and threat of release of hazardous substances at the Site, EPA has spent public funds and anticipates spending additional public funds pursuant to CERCLA. Based on information presently available, EPA has determined that your company may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

The Site is described as the Berry's Creek Study Area, which includes the water body known as Berry's Creek including the Berry's Creek Canal and the natural course of Berry's Creek, all tributaries to Berry's Creek from its headwaters to the Hackensack River, and wetlands that are hydrologically connected to Berry's Creek and/or its tributaries. The Berry's Creek Study Area also includes upland properties in the Berry's Creek watershed (as potential sources of contamination to the creek, but not for the purpose of detailed investigations of the upland areas themselves). Tidal portions of the Hackensack River and adjacent areas will also be studied, as necessary, to evaluate the ecological relationships and exchanges of contamination between these areas and the Berry's Creek Study Area.

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### NOTICE OF POTENTIAL LIABILITY

Under CERCLA and other laws, responsible parties may be held liable for monies expended by the federal government in taking response actions at and around sites where hazardous substances have been released, including investigative, planning, removal, remedial and enforcement actions. Responsible parties also may be subject to orders requiring them to take response actions themselves. Responsible parties under CERCLA include, among others, the current and past owners or operators of a facility from which there has been a release or threatened release of hazardous substances, persons that arranged for the treatment or disposal of hazardous substances which were sent to such a facility, and persons that transported hazardous substances to such a facility.

By this letter, EPA notifies you that it has reason to believe that your company or its predecessor owned or operated, or currently owns or operates, a facility which engaged in activities resulting in the release of hazardous substances to the Site, or arranged for the treatment or disposal of hazardous substances which may have come to be disposed of at such facility, and is accordingly notifying your company of its status as a potentially responsible party ("PRP") under Section 107(a) of CERCLA, 42 U.S.C. §9607(a).

### REQUEST TO PERFORM REMEDIAL INVESTIGATION / FEASIBILITY STUDY ("RI/FS")

By this letter, EPA invites your company to enter into a settlement with EPA which provides for the PRPs to conduct the RI/FS required at the Site. Any agreement by the PRPs to perform the RI/FS will need to be memorialized in an administrative order on consent ("AOC") issued by EPA under CERCLA.

EPA, pursuant to an agreement with Morton International, Inc. that provided partial funding of the development of a work plan, has prepared the Framework Document for the Berry's Creek Study Area (enclosed on Compact Disc). The Framework Document contains a detailed explanation of the work that will be required to conduct the RI/FS. In addition, as explained below, EPA will be available to meet with you to discuss questions concerning the Framework Document and the RI/FS.

Within forty-five (45) days from the date of your receipt of this letter, please submit a good faith offer to conduct the RI/FS. A good faith offer consists of a written proposal that demonstrates your company's qualifications and willingness to conduct the RI/FS and shall include the following elements:

1. A statement of the PRPs' willingness to conduct the RI/FS.
2. A demonstration of the PRPs' technical capability to carry out the RI/FS including the identification of the firm(s) that may actually conduct the work or a description of the process that will be undertaken to select the firm(s).
3. A demonstration of the PRPs' capability to finance the RI/FS.
4. A statement of the willingness by the PRPs to reimburse EPA for costs incurred in

overseeing your implementation of the RI/FS

5. The name, address, and phone number of the party who will represent you in the negotiations.

Please be advised that pursuant to Section 104(a) of CERCLA, 42 U.S.C. §9604(a), EPA will only allow the PRPs to perform the RI/FS if it determines that the PRPs are qualified to perform the action and can do so properly and promptly. If the PRPs agree to perform the RI/FS, the agreement will be memorialized in an AOC, and EPA will provide the PRPs with a draft AOC containing, among other things, a detailed explanation of the work required to implement the RI/FS.

If EPA does not receive a timely response, it will assume that the PRPs do not wish to enter into a settlement for, or participate in, the RI/FS. In such an event, EPA will take appropriate action at the Site which could include issuance of a Unilateral Administrative Order to your company under Section 106(a) of CERCLA, 42 U.S.C. §9606(a), requiring that it perform the RI/FS, or EPA may perform the RI/FS and pursue a cost recovery claim against your company pursuant to Section 107 of CERCLA, 42 U.S.C. §9607.

#### FINANCIAL CONCERNS/ABILITY TO PAY SETTLEMENTS

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs or performance of work at a site may be substantially limited. If you believe, and can document, that you fall within that category, please contact Clay Monroe, Assistant Regional Counsel, in writing at the address provided in this letter. You will be asked to submit financial records including federal income tax returns as well as audited financial statements to substantiate your claim.

Also, please note that, because EPA has a potential claim against you, you must include EPA as a creditor if you file for bankruptcy.

#### INFORMATION TO ASSIST POTENTIALLY RESPONSIBLE PARTIES

EPA would like to encourage good faith negotiations between the PRPs and EPA, as well as among the PRPs. To assist PRPs in preparing a proposal and in negotiating with EPA concerning this matter, EPA is providing a list of names and addresses of all PRPs who are being notified. Inclusion on, or exclusion from, the list does not constitute a final determination by EPA concerning the liability of any party for the release or threat of a release of hazardous substances at the Site. Be advised that notice of your potential liability at the Site is being forwarded to all parties on this list.

EPA will establish an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record files will be available to you and the public at the Superfund Records Center, located at EPA Region 2 offices in New York City. Please contact Douglas Tomchuk at (212) 637-3956 if you wish to arrange an appointment to review Site files.

EPA will hold an informational meeting for PRPs interested in finding out more about the Framework Document and the work effort that EPA believes appropriate to study the Site. The meeting will be on Monday, April 3, 2006 at 1:00 PM in Conference Room 27A at the Region 2 offices in New York City. The presentations will be of a technical nature, and should not be considered a negotiation session. EPA would appreciate notification of those parties planning to attend. Please contact Douglas Tomchuk at 212-637-3956 or via email at [tomchuk.doug@epa.gov](mailto:tomchuk.doug@epa.gov) if you are planning on attending.

### PRP STEERING COMMITTEE

EPA recommends that all PRPs meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with EPA. Alternatively, EPA encourages each PRP to select one person from its company who will represent its interests.

Your response to the Notice contained in this letter, including your written proposal to perform the RI/FS, should be sent to:

Douglas Tomchuk  
Remedial Project Manager  
USEPA - Region 2  
290 Broadway, 19<sup>th</sup> Floor  
New York, New York 10007-1866

With a copy to:

Clay Monroe  
Assistant Regional Counsel  
USEPA - Region 2  
290 Broadway, 17<sup>th</sup> Floor  
New York, NY 10007-1866

EPA urges that your immediate attention and prompt response be given to this letter.

This notice is not being provided pursuant to the "special notice" procedures outlined in Section 122 (e) of CERCLA, 42 U.S.C. Section 9622 (e), because EPA does not believe that those procedures would facilitate an agreement or expedite the RI/FS for the Site.

### RESOURCES AND INFORMATION FOR SMALL BUSINESSES

As you may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. You may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidances regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. You may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, the EPA Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

If you have any questions regarding this Notice of Potential Liability and Request to Perform the RI/FS, or would like to discuss this matter with EPA, please call or have your attorney call Mr. Monroe at (212) 637-3142.

Sincerely yours,

  
Raymond Basso, Strategic Integration Manager  
Emergency and Remedial Response Division

Enclosures

cc: Gwen Zervas, NJDEP  
Rachel Layre, NJDOL